

Special Marriage Cases: Dissolution, Convalidation of Marriages

- ▣ 1. **Dissolution** of the Bond - cc. 1141, 1134;
- ▣ 2. Dissolution of a Ratified and Non-Consummated Marriage: cc. 1142 and procedural norms: cc. 1697-1706;
- ▣ 3. Pauline Privilege: cc. 1143-1147;
- ▣ 4. Sixteenth Century Provisions for Polygamous Marriages: cc. 1148-1150;
- ▣ 5. Dissolution in Favor of the Faith: special norms;
- ▣ 6. **Convalidation of Marriage** and *sanatio in radice* : cc. 1156-1165;

Special Marriage Cases

- ▣ Wojciech KOWAL, OMI and William H. WOESTMAN, OMI, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, 4th rev. and updated ed., with appendices, Ottawa, Faculty of Canon Law, Saint Paul University, 2008, xii, 355 p.

Spanish-language edition:

- ▣ W. KOWAL y W.H. WOESTMAN, *Matrimonios, Casos especiales y procedimientos: de la disolución de un matrimonio rato y no consumado, del privilegio paulino, de la disolución del matrimonio en favor de la fe, de la separación permaneciendo el vínculo, de la convalidación del matrimonio, de la sanación en la raíz, del proceso sobre muerte presunta del cónyuge*, traducción coordinada por Monica MAVRIČ, Facultad de Derecho Canónico, Saint Paul University, Ottawa, 2013, xiv, 334 p.

Recent developments:

- ❑ In his allocution to the Roman Rota of January 21, 2000, John Paul II responded to the opinions regarding the very concept of vicarious power of the pope by affirming the theological principle expressed in c. 1141 that **no human authority can dissolve a ratified and consummated marriage.**

In other words, such a marriage enjoys **absolute extrinsic indissolubility.**

- ❑ instruction of the Congregation for the Doctrine of the Faith *Potestas Ecclesiae*, 30 April 2001, approved by John Paul II, 16 February 2001;
- ❑ convalidation of marriage, especially the understanding of the so-called “new celebration of marriage” (c. 1160).

Sources

P. AMENTA, *Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis*, trans. by M. FRANCIS and C. HANCOCK, Collection Gratianus, Montreal, Wilson&Lafleur, 2011, xxiv, 258 p. (original in italian: *Le procedure amministrative in materia di matrimonio canonico: storia, legislazione e prassi*, Libreria editrice Vaticana, 2008, 221 p.).

C. 1056

The essential properties of marriage are **unity** and **indissolubility**, which in Christian marriage obtain a **special firmness** by reason of the sacrament.

C. 1134

From a valid marriage there arises between the spouses **a bond** which by its nature is perpetual and exclusive. Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state.

Ladislav Örsy, SJ

the reality of a marriage bond
“[...] is the **creation of the law,**
human or divine, as the case
may be.”

*(Marriage and Canon Law: Texts and Comments,
Reflections and Questions, Wilmington, DE, Michael
Glazier, Inc., 1988, 203, note 2).*

- In terms of scholastic philosophy, the reality of the marriage bond situates itself in the category of

- **accidents,**

- and in this case, the marriage bond is to be considered as

- **a relationship.**

- Insofar as the marriage bond is a legal construct, it is a **relationship of**

- **rights and obligations.**

Special Marriage Cases

The notion of indissolubility

- ▣ **intrinsic indissolubility** of marriage (property of marital bond) means that a validly contracted marriage cannot be dissolved by the **will of the parties** (withdrawal of the consent).
- ▣ **extrinsic indissolubility** of marriage - means that validly contracted marriages cannot be dissolved by any **external authorities** or by **fulfillment of certain conditions**.

Special Marriage Cases

- ▣ the Church also teaches that while all valid marriages are intrinsically indissoluble, not all of them enjoy **absolute** extrinsic indissolubility.

Pius XII addressed this question in his 1941 allocution to the Roman Rota:



“whereas other marriages, though they are intrinsically indissoluble, still **do not have absolute extrinsic indissolubility**, but, under certain necessary conditions, can [...] be dissolved not only by virtue of the Pauline privilege, but also by the **Roman Pontiff** in virtue of his **ministerial power** (*in virtù della sua potestà ministeriale*).”

Authority of the pope

- ▣ in establishing the Church Jesus Christ conferred upon it all the necessary power for it to achieve its end, i.e., sanctifying, teaching, and pastoral authority. We call it **ecclesiastical power or authority which is proper**: exercised in the pope's name
- ▣ the pope has also **vicarious authority to act in the name of God** in certain instance (**ministerial or instrumental power**) – the pope acts not in his own name as head of the Church, but in the name of God or as an instrument of God, as the vicar of Christ.

The principle, “What God has joined, man must not separate” refers to the marriage union. Therefore, it is not lawful for man to separate those joined in marriage [...]. What the Roman Pontiff does in this regard is not done by human authority, but by divine, since he is truly called the vicar of the true God, not of mere man. For although we are successor of the Prince of the Apostles, we are not however, his vicar, nor the vicar of a certain apostle, nor of man, but we are the vicar of Jesus Christ Himself. Therefore, when the pope separates those whom God has united, it is not man who acts, since he is not vicar of man, but it is God who acts, since he is vicar of God.

Epistolarum Innocentii III Romani Pontificis libri undecim, Stephanus Baluzius Tutelensis in unum collegit, magnam partem nunc primum edidit, reliqua emendavit, vol. 1, Paris, F. Muguet, 1682, 181, col. 2, quoted by A.M. Abate, *The Dissolution of the Matrimonial Bond in Ecclesiastical Jurisprudence*, transl. by N. Hynes and G. Robinson, Rome, Desclée, 1962, 13.

“The power, by which the Roman Pontiff dissolves a [non-consummated] ratified marriage, is not *proper jurisdictional power*, which he has insofar as the Church is a juridically perfect society and for that reason naturally his and thus ordinary power. It is completely **special, extraordinary, indeed ministerial and instrumental insofar as it is exercised by the authority of and in the name of Christ himself**; wherefore it is properly vicarious power, and in the true and strict sense divine power”

F.M. CAPPELLO, *De sacramentis*, 5th ed., vol. 5, *De matrimonio*, Turin, Marietti, 1947, no. 762, 749.

Since the pope in using vicarious authority is not acting in his own name as head of the Church, and is not exercising jurisdiction over ecclesiastical matter, but over divine matter (by natural law marriage is indissoluble), **he can validly act** only if there is a **just cause**

(analogy to dispensations - just and reasonable cause for a lower authority than the legislator, cf. c. 90)

Can. 1061 §1

A valid marriage between the baptized is said to be merely **ratified** (*ratum tantum*) if it has not been consummated;

ratified and consummated (*ratum et consummatum*) if the spouses have performed between themselves in a **human fashion** (*humano modo*) a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh.

A ratified (*ratum*) marriage is a valid marriage between two (validly) baptized persons (c. 1061, §1).

The baptism of both parties can be **either prior to contracting the marriage, or subsequent to it.**

If one or both of the parties were not baptized at the moment of the marriage, they contracted a natural bond of marriage.

With the valid reception of baptism by **both parties** this **natural bond becomes sacramental**, and the marriage, which until that moment was natural, becomes ratified, i.e., sacramental.

A marriage that is **ratified
and consummated** (*ratum et
consummatum*)

cannot be dissolved
by **any human power** or by
any cause,
except death.

John Paul II, allocution to the Roman Rota, January 21, 2000:

Nevertheless, there is an increasingly widespread idea that the Roman Pontiff's power, being the vicarious exercise of Christ's divine power, is not one of those human powers referred to in the canons cited above [c. 1141], and thus it could be extended in some cases also to the dissolution of ratified and consummated marriages.

In view of the doubts and anxieties
this idea could cause, it is necessary
to reaffirm that a **ratified and
consummated** sacramental marriage
can never be dissolved,
not even by the power of the Roman
Pontiff.¹

(John Paul II, allocution to the Roman Rota, January 21, 2000, no. 6, in
AAS, 92 [2000], 353, in *Papal Allocutions to the Roman Rota 1939–2011*,
257).

[...] the expression “**human power**” **also includes the Pope’s ministerial or vicarious power**, and he presented this doctrine as being peacefully held by all experts in the matter.¹

1 John Paul II, allocution to the Roman Rota, January 21, 2000, no. 7, in *AAS*, 92 (2000), 354, in *Papal Allocutions to the Roman Rota 1939–2011*, 258.

The Pope maintains that the opposite assertion would imply the thesis that there is no absolutely indissoluble marriage, which thesis would be contrary to what the Church has taught and still teaches about the indissolubility of the marital bond.²

² Ibid., no. 6, in *AAS*, 92 [2000], 353, in *Papal Allocutions to the Roman Rota 1939–2011*, 257).

John Paul II concludes that “[...] the non-extension of the Roman Pontiff’s power to ratified and consummated sacramental marriages is taught by the Church’s Magisterium as a **doctrine to be held definitively**, even if it has not been solemnly declared by a defining act.”²

² JOHN PAUL II, allocution to the Roman Rota, January 21, 2000, no. 8, in *AAS*, 92 (2000), 355, in *Papal Allocutions to the Roman Rota 1939–2011*, 258.

“Over the last forty years, a considerable number of theologians, moral theologians and canonists have offered many reasons in support of the **de facto dissolubility** of canonical marriage *ratum et consummatum*. They have explained that indissolubility may be a Christian ideal but not an absolute condition that makes a new marriage impossible; nor that the new marriage prevents the faithful from taking the sacraments”

(abstract of Javier OTADUY GUERÍN, “*Dulcor misericordiae* III. Las situaciones irregulares desde el Concilio hasta *Amoris laetitia*” [Dulcor misericordiae III. Irregular Situations from Vatican II to *Amoris laetitia*], in *Ius canonicum*, 58 (2018), 149.

The writings of certain authors gave rise to the institution of the economy (*oikonomia*) known in the Eastern Churches separated from Rome. There are contemporary authors who advocate embracing these traditions also by the Catholic Church. However, according to Card. Ratzinger this peculiar “theology of divorce” cannot in any way be reconciled with the will of Christ concerning the indissolubility of marriage.

Dissolution of
a **Ratified and Non-Consummated**
Marriage:
cc. 1142
and procedural norms: cc. 1697-1706

Super rato - procedure

Procedural norms: cc. 1697-1706;

BENEDICT XVI, motu proprio
Quaerit semper, August 30, 2011.

Super rato cases

Benedict XVI, motu proprio *Quaerit semper*,
August 30, 2011 established

- ❖ a special office under the Roman Rota with competence to study cases for non consummated marriages as well as those of the invalidity of ordination.
- ❖ This competence is for both the Western and the Eastern Churches (see CCEO, c. 1384).
- ❖ The change took effect on October 1, 2011.

Super rato cases

CCEO c. 1384: “In order to obtain the dissolution of a non-consummated marriage or the dissolution of a marriage in favour of the faith, the special norms issued by the Apostolic See are to be strictly followed.”

Super rato cases

“§ 2. An Office has been set up at this Tribunal to examine the fact of non-consummation in a marriage and the existence of a just cause for granting a dispensation. It therefore receives all the acts, together with the *votum* of the bishop and the remarks of the defender of the bond, weighs them according to its own special procedure and, if the case warrants it, submits a petition to the Supreme Pontiff requesting the dispensation.

§ 3. This Office is also competent to examine cases concerning the nullity of sacred ordination, in accordance with both universal and proper law, *congrua congruis referendo*” (*Quaerit semper*, art. 2).

Super rato cases

***Praedicate Evangelium*, art. 200**

[...]

§ 2. The Tribunal of the Roman Rota also includes the Office competent to adjudicate the fact of the non-consummation of marriage and the existence of a just cause for granting dispensations.

§ 3. This Office is also competent to deal with cases of the nullity of sacred ordination, pursuant to the norm of universal and proper law, in accordance with the different cases.

Art. 201

[...]

§ 3. The Office for procedures of dispensation from a marriage *ratum et non consummatum* and for cases of the nullity of sacred ordination is headed by the Dean, assisted by its proper officials and by designated commissioners and consultors.

Sources

CONGREGATION FOR THE SACRAMENTS, *De processu super matrimonio rato et non consummato*, December 20, 1986, in *Communicationes*, 20 (1988), 78–84, English translation in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures*, 123–129.

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, Circular Letter on the Instruction of a Cause for Dispensation of a *Ratum et non Consummatum* Marriage, June 13, 2009, communicated to local ordinaries; also in *Roman Replies*, 2009.

- Course on the new process of nullity of marriage and the procedure *super rato*, Rome, Palazzo della Cancelleria
- «Si informa che prossimamente verranno comunicate le date, per il corso sul nuovo processo matrimoniale canonico e sulla procedura *super rato*».

Can. 1142

A non-consummated
marriage between
baptized persons

or (a non-consummated
marriage) between a
baptized party and a **non-**
baptized party

can be dissolved by the
Roman Pontiff

for a just cause,

at the request
of both
parties,

even if the
other party is
unwilling.

or of one of
them

According to the practice of the Congregation, the following are considered to be just causes (although this should not be considered a complete list):

- ❑ serious aversion or dislike of the couple without hope of reconciliation and a successful marriage;
- ❑ fear of probable future scandal;
- ❑ discord and quarrels among the relatives;

- ❑ one of the parties had contracted a civil marriage with a third party;
- ❑ civil separation or divorce with the danger of incontinence of the innocent party;
- ❑ probable impotence with danger of incontinence;
- ❑ contracting of an incurable disease after the marriage;
- ❑ partial proof of defect of consent or of an impediment.

Super rato cases

Can. 1697 - Only the spouses,
or one of them even if the other is
unwilling,
have the right to petition for **the**
favor of a dispensation from a
marriage *ratum et non*
consummatum.

Super rato cases

The petition, signed by hand, is always addressed to the Holy Father and should be accompanied by “a summary of the matrimonial history, an indication of the causes that have prevented the consummation, the reasons for the dispensation being sought, the date and place of the drafting of the libellus, and the diocese of the domicile or quasi-domicile of the one, or both, petitioner(s).”

- CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, circular letter on the instruction of a cause for dispensation of a *ratum et non consummatum* marriage, June 13, 2009, no. 1, communicated to local ordinaries.

Super rato cases

Can. 1699

§1. The person competent to accept a libellus seeking a dispensation is the **diocesan bishop of the domicile or quasi-domicile of the petitioner**, who must arrange for the instruction of the process if the petition is well founded.

Super rato cases

Prorogation of competence may, nevertheless, be requested in particular cases from the Roman Rota in order that the process may be instructed in the place where most of the evidence is to be collected, provided that, [it seems, in analogy to the requirement of previous c. 1673, 4°], the Bishop of the domicile or quasi-domicile of the petitioner grants his consent.

- ▣ See CONGREGATION FOR THE SACRAMENTS, *De processu super matrimonio rato et non consummato* (1986), no. 1.

Super rato cases

Canon 1672, 3^o of *Mitis Iudex*² drops the requirement of such consent for marriage nullity cases. Would that mean that this stipulation is valid also in the context of c. 1699, § 1?

² See FRANCIS, *motu proprio Mitis Iudex Dominus Iesus*, in *AAS*, 107 (2015), 958–970, English translation in *Canadian Canon Law Society Newsletter*, vol. 37, no. 2 (2015), 50–65, at 53.

Super rato cases

Indeed, the acts should contain the reference to pastoral attempts undertaken to reconcile the parties.

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, circular letter, 2009, no. 3.

Super rato cases

On the other hand, one can notice that c. 1675 of *Mitis Iudex*, equivalent to previous c. 1676, no longer includes a similar duty on part of an ecclesiastical judge and reads: “The judge, before he accepts a case, must be informed that the marriage has irreparably failed, such that conjugal living cannot be restored.”¹

¹ *Mitis Iudex Dominus Iesus*, in AAS, 107 (2015), 962, in *Canadian Canon Law Society Newsletter*, vol. 37, no. 2 (2015), 55.

Can. 1699

§2. If the proposed case has special difficulties of the juridical or moral order, however, the diocesan bishop is to **consult the Apostolic See**.

§3. **Recourse to the Apostolic See** is available against a decree by which a bishop rejects a libellus.

Super rato cases

Can. 1700

§1. Without prejudice to the prescript of c. 1681, the bishop is to entrust the instruction of these processes either in a stable manner or in individual cases to **his tribunal, that of another diocese, or a suitable priest.**

Super rato cases

The decrees of appointment of the instructor of the cause, and also of the defender of the bond and the notary, are to be included in the acts.

The Congregation insists that the instructing judge must always to be a priest (*semper debet esse sacerdos*). In case of necessity, the instructor can employ the services of a lay person, but as an auditor only (*tantum uti auditor*).

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 6.

Super rato cases

Previous canon 1681:

Whenever in the course of the instruction of a case a very probable doubt arises that the marriage has not been consummated, the tribunal can, **having with the consent of the parties** suspended the nullity case (*suspensa de consensu partium causa nullitatis*), complete the instruction for a dispensation from a non-consummated marriage, and in due course forward the acts to the Apostolic See, together with a petition for a dispensation from either or both of the spouses, and with the opinions of the tribunal and of the bishop.

Super rato cases

Moreover, even if the respondent was declared absent by the judge during the nullity trial, nevertheless, “he or she must be cited for the purpose of obtaining consent regarding the transfer of the cause to the administrative process. Bearing in mind c. 1592 §1 and *Dignitas connubii*, art. 138 §3, if the respondent, legitimately cited, does not respond to the citation, the tribunal may interpret this silence as a tacit assent to the suspension of the process and to the procedure for requesting the dispensation.”

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 9.

Super rato cases

Mitis Iudex , c. 1678, §4 :

Whenever, during the instruction of a case, a very probable doubt emerges that consummation of the marriage did not occur, **having heard the parties** (*auditis partibus*), the tribunal can suspend the case of nullity, complete the instruction for a dispensation super rato, and then transmit the acts to the Apostolic See together with a petition for a dispensation from either one or both of the spouses and the votum of the tribunal and the Bishop.

Super rato cases

Can. 1701

§1. The defender of the bond must always intervene in these processes.

§2. A legal representative is not admitted, but because of the difficulty of a case, a bishop can permit the petitioner or the respondent to have the assistance of a legal expert.

Super rato cases

Can. 1702

In the instruction **each spouse is to be heard**, and the canons on the collection of proofs in the ordinary contentious trial and in cases of the nullity of marriage are to be observed insofar as possible, provided that they can be reconciled with the character of these processes.

Super rato cases

The parties are to be interrogated by the instructor in the presence of the notary and the defender of the bond, under oath to speak the truth (*de veritate dicenda*). At the conclusion of the interrogation, the parties should, again under oath, confirm the truth of their depositions (*de veritate dictorum*).

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 6.

Super rato cases

In particularly delicate or complex cases, medical experts may also be named by the court (cf. cc. 1574–1581). In any case, if the results of any medical examinations of the state of the genital organs of the party(ies), and on their capacity (incapacity) for conjugal act, or on other aspects relative to the case are available, they should be enclosed in the dossier.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 12.

Super rato cases

The Congregation calls for attestations of the credibility and honesty of the parties and of the witnesses collected from their pastors. If the pastors are absent, other credibility witnesses are sought: other priests, religious or committed laity who have particular knowledge of the persons involved.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 11.

Super rato cases

The witnesses, proposed by the parties or selected by the instructor, are to be interrogated under oath to speak the truth (*de veritate dicenda*), according to the questionnaire prepared beforehand.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 13.

Super rato cases

The Congregation reminds those entrusted with instruction of *ratum et non-consummatum* cases about the possibility of finding documents that could prove useful for physical and moral proofs, as for instance, medical and police reports or private letters.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 13.

Super rato cases

In the cases in which there was a transfer from a judicial to an administrative procedure in accordance with c. 1681, “[...] the *votum pro rei veritate* is to be drawn up by the bishop of the regional or interdiocesan tribunal, after seeking the advice of the bishop of the petitioner. This is to be done at least in reference to the opportuneness of granting the dispensation. If the case of nullity was handled by the diocesan tribunal, the *votum pro rei veritate* is to be drawn up by the competent Bishop.”

Congregation for the Sacraments, *De processu super matrimonio rato et non consummato*, no. 23b, in *Communicationes*, 20 (1988), 83.

Super rato cases

Original copies of the baptismal certificates of the parties and their marriage certificate, and, if applicable, the birth certificates of children conceived before the marriage are to be also included in the acts. Moreover, if applicable, the acts of civil processes of divorce, separation or nullity (or at least copies of the sentence of the civil court) are to be appended.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 5.

Super rato cases

The original acts of the instruction are to be kept in the archive of the diocesan curia.

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 17.

Writing a *Votum*

Ordinarily there are the following sections or parts in a *votum*:

- *Species facti*;
- *In factis*;
- *Conclusion*.

Species facti:

The *species facti* consists in a *brief résumé* of all the pertinent, undisputed facts which do not have to be proven: e.g., the petitioner's date of birth, baptism, and relevant facts concerning the parents, number of siblings, education, employment, that affect the case in some way; similar facts concerning the respondent; when and how they met, their courtship, marriage.

In iure:

It is not necessary to include an *in iure* section when favor of faith cases and non consummation cases are sent to the Holy See.

In factis:

The Bishop's judgment concerning whether non-consummation has been proven, and, secondly, concerning the existence of a just cause for granting the favour and whether it is opportune to grant it. He should take into account the consequences of the requested grant in relation to, on the one hand, the good of souls and restoration of peace of conscience, and, on the other hand, any harm that could arise from the granting of the favour, including the possibility of scandal or bewilderment of the faithful.

Conclusion:

Everything is brought together as a *conclusion*, like in the following example:

Having considered all the facts as found in the acts, I am of the opinion, *salvo meliori iudicio*, that it has been demonstrated that N.N. and N.N. have not consummated their marriage, and I recommend that their sacramental marriage be dissolved by the Holy Father in order that they be free to contract another marriage and facilitate their salvation. There is no danger of scandal among the faithful.

Date, signature of the Bishop

Super rato cases

Cost (taxa):

Ratum non consummatum –

Canada - 950 CAN (?)

900 USD (Chicago, 2021)

Other countries: different *taxa*

Time: 3-5 months (9 months?)

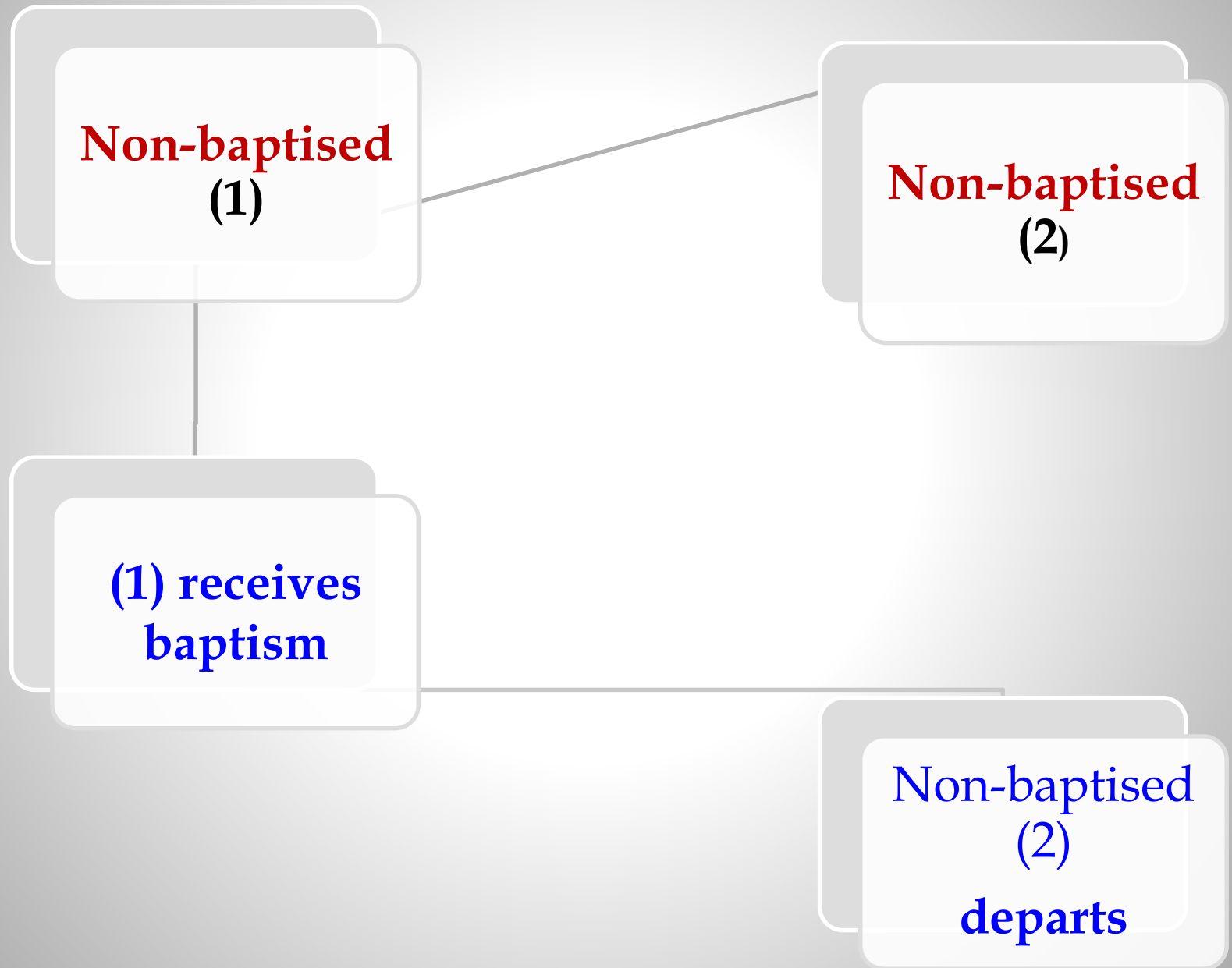
Super rato cases

The Congregation will consider requests for a reduction, or even a total exemption in fees. However, such requests are to be supported by documentation and a recommendation from the diocesan curia “[...] which, in turn, declares its inability to cover the actual costs locally for the Congregation.”

Congregation for Divine Worship and the Discipline of the Sacraments, circular letter, 2009, no. 18.

Pauline privilege (cc. 1143-1147)

Pauline privilege



CONGREGATION FOR THE DOCTRINE OF
THE FAITH, Multiple Marriage
Cases Involving Pauline Privilege
and Ligamen, in F.S. PEDONE and
J.I. DONLON (eds.), *Roman Replies
and CLSA Advisory Opinions*,
2005, 23–26.

Can. 1143 - § 1

A marriage entered into by
two non-baptized persons

is **dissolved** by
means of the
pauline privilege

in favour of the
faith of **the party
who has received
baptism**

by the very fact that **a new
marriage is contracted** by the
same party,

provided that the **non-
baptized party departs.**

Pauline privilege

Two unbaptized persons,
who may be nominally
Christians, are married;

the marriage breaks up; they divorce;

one party

subsequently desires to
be baptized as a Catholic

and to enter a valid marriage
with a Catholic (often after
an invalid civil marriage)

the other
party

(often after an
invalid civil
marriage)

Pauline privilege

For the application of the Pauline privilege **three conditions** are necessary:

- ▣ there is a valid marriage contracted by **two unbaptized** persons;
- ▣ **one** of these spouses is subsequently **validly baptized**;
- ▣ the **unbaptized spouse refuses** either to cohabit physically, or to cohabit peacefully *sine contumelia Creatoris*.

Pauline privilege

It is **essential**

that **only one** of the spouses, who were unbaptized at the time of their marriage, **receive baptism.**

Once both of the spouses receive baptism, even subsequent to their final (existential) separation, **their marriage becomes ratified (*ratum*).**

Pauline privilege

§2. The non-baptized party is considered to depart if he or she does not wish

- ❑ to cohabit with the baptized party or
- ❑ to cohabit peacefully without affront to the Creator
- ❖ unless the baptized party, **after baptism was received**, has given the other a just cause for departing.

Pauline privilege

Physical departure, i.e., the unbaptized party does not want to live at all with the baptized spouse,

e.g., unjustly deserts the baptized spouse, contracts marriage or lives with a third party and is unwilling to return to the baptized party, physically cannot resume cohabitation because of imprisonment, is afflicted with a serious incurable illness which would make cohabitation impossible or dangerous.

Pauline privilege

Moral departure - the unbaptized person is willing to continue conjugal life, but will not live in peace, without insult, offence to the Creator (*sine contumelia Creatoris*),

e.g., refuses to permit the Catholic education of the children, tries to destroy the faith of the Catholic spouse, tries to lead the Catholic party into serious sin, by quarrels and provocation makes conjugal peace impossible

Pauline privilege

Can. 1144, §1. For the baptized party to **contract a new marriage validly,**

the **non-baptized party must always be interrogated** whether:

1/ he or she also wishes to receive baptism;

2/ he or she at least wishes to cohabit peacefully with the baptized party without affront to the Creator.

Pauline privilege

§2. This interrogation must be done after baptism;

For a **grave cause**, however, the local ordinary can permit

the interrogation to be done **before baptism**

or can even **dispense** from the interrogation either before or after baptism

provided that it is evident at least by a summary and extrajudicial process that it **cannot be done** or would be **useless**.

Pauline privilege

Can. 1145 §1. The interrogation is regularly to be done on the authority of the **local ordinary of the converted party**. This ordinary must grant the other spouse a period of time to respond if the spouse seeks it, after having been advised, however, that his or her **silence will be considered a negative response** if the period passes without effect.

Pauline privilege

§2. Even an interrogation **made privately** by the converted party is valid and indeed licit if the form prescribed above cannot be observed.

§3. In either case, the fact that the interrogation was done and its outcome must be established legitimately in the external forum.

Pauline privilege

Can. 1146 The baptized party has the right to contract a new marriage **with a Catholic party**:

1/ if the other party **responded negatively** to the interrogation or if the interrogation had been **omitted** legitimately;

2/ if the non-baptized party, already interrogated or not, at **first persevered** in peaceful cohabitation without affront to the Creator but **then departed without a just cause**, without prejudice to the prescripts of cc. 1144 and 1145.

The Eastern Code, in cc. 854–858 simply copies the Latin legislation.

*Sixteenth Century
Provisions
for
Polygamous
Marriages*

Can. 1149

An **unbaptized** person

who, having received
**baptism in the
Catholic Church,**

**cannot re-establish
cohabitation** with his or her
unbaptized spouse by reason
of **captivity or persecution,**

**can contract
another marriage,**

even if the other party
has in the meantime
received baptism,

without prejudice to the
provisions of can. 1141.

In a doubtful matter
the privilege of the
faith
enjoys
the favour of the
law.

Can. 1150

A response from the Holy Office (1937) :

1. Whether in a marriage contracted by **two non-Catholics** who are **doubtfully baptized**, in the case of an **insoluble doubt** regarding the baptism, either party upon conversion to the faith may be allowed to use the **Pauline privilege** in virtue of c. 1127 of the Code of Canon Law.
2. Whether in a marriage contracted between **a party who is not baptized** and a non-Catholic party who is **doubtfully baptized**, in case of an **insoluble doubt** regarding baptism, the ordinaries can allow to either party upon conversion to the faith the use of the **Pauline privilege** in virtue of c. 1127.

Reply:

1. In the **negative**.
2. **Recourse must be had to the Holy Office** in each case.

List of the cases when the principle can be invoked:

- if there is a doubt about the subsequent baptism of the other party after their final separation (c. 1149);
- if there is a doubt concerning the validity of a certainly non-sacramental marriage, e.g., because of the doubtful validity of marriage consent, the existence of an impediment;
- if there is a doubt as to who was the first spouse in a polygamous marriage;
- if there is a doubt concerning the interpellation, sufficient reason for a dispensation, the sincerity of the reply;
- if there is a doubt as to whether the convert was the unjust cause of the other party's departure.

Sources

- ▣ THE APOSTOLIC SIGNATURA,
Decretum de recta applicatione
canonum 1150 et 1608, §4, 23
January 1996, in *Periodica*, 85 (1996),
357–360, English translation in K.W.
VANN and J.I. DONLON (eds.),
*Roman Replies and CLSA Advisory
Opinions*, 1996, 39–45.

A. MENDONÇA, “The Correct Interpretation of Canons 1150 and 1608, § 4,” in *Studia canonica*, 31 (1997), 475–512.

**DISSOLUTION
OF A MARRIAGE
IN FAVOUR OF THE FAITH**

Sources

CONGREGATION FOR THE DOCTRINE OF THE FAITH,
*Normæ de conficiendo processu pro solutione
vinculi matrimonialis en favorem fidei* Potestas
Ecclesiæ, 30 April 2001, E civitate Vaticana, 2001.

_____, *Norms The Power of the Church on the
Preparation of the Process for Dissolution of the
Marriage Bond in Favour of the Faith*, official Latin
text and English translation, Vatican City, 2003.

_____, *Notes Regarding the Documentary and
Procedural Aspects of Favour of the Faith Cases*,
privately distributed, 2001.

CCEO c. 1384

In order to obtain the dissolution of a non-consummated marriage or the dissolution of a marriage in favour of the faith,

the special norms issued by the Apostolic See are to be strictly followed.

Sources

AMBORSKI, K.M., *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, Rome, Pontificia Università Lateranense, 2004.

AMENTA, P., *Administrative Procedures in Canonical Marriage Cases: History, Legislation and Praxis*, transl. by M. FRANCIS and C. HANCOCK, Collection Gratianus, Montreal, Wilson&Lafleur, 2011.

Sources

EASTON, F.C., “Favour of the Faith Cases and the 2001 Norms of the Congregation for the Doctrine of the Faith,” in *CLSA Proceedings*, 64 (2002), 97–119.

KENNEDY, J.J., “The Dissolution of Marriage in Favour of the Faith: New Norms Invite a New Look at Our Practice,” in *CLSA Proceedings*, 67 (2005), 123-162.

Sources

KOWAL, W., “Norms for Preparing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith,” in *Folia canonica*, 8 (2005), 89–118.

_____, “Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith,” in *Studia canonica*, 38 (2004), 411–438.

_____, “Quelques remarques sur la discipline de la dissolution de mariages en faveur de la foi,” in *Studia canonica*, 43 (2009), 161–181.

MCCORMACK, A.R.A., “A Commentary on the Norms for Favour of the Faith Cases,” in *The Jurist*, 65 (2005), 268–336.

SABBARESE, L., “The Dissolution of a Non-Sacramental Marriage in Favour of the Faith,” in *Studies in Church Law*, 1 (2005), 199–245.

_____ and E. FRANK, *Scioglimento in favorem fidei del matrimonio non sacramentale: norme e procedura*, Studia canonica, no. 58, Vatican City, Urbaniana University Press, 2010.

From CLSA webpage:

The Congregation for the Doctrine of the Faith and the Faculty of Canon Law of the Pontifical Lateran University have organized a study day on **April 27, 2021** entitled:

THE DISSOLUTION OF MARRIAGE IN FAVOREM FIDEI.
TWENTY YEARS AFTER PUBLICATION OF *POTESTAS
ECCLESIAE*
(2001-2021)

For more information on how to participate and the program, consult:

http://www.vatican.va/roman_curia/congregations/cfaith/ufficioma_trimoniale_cdf_index_it.htm

Dissolution in favour of the faith – art. 1

A marriage entered by parties,
**at least one of whom is not
baptized,**

can be dissolved by the **Roman
Pontiff** in favour of the Faith,

as long as the
marriage itself
**was not
consummated**

after both spouses have
received baptism.

Dissolution in favour of the faith

The Instruction of 1973 repeated the two conditions of the 1934 Norms (identical to those in 2001 Norms) and added a third condition *sine qua non*:

“that the person, who is unbaptized or baptized outside the Catholic Church, grants the Catholic party the freedom and ability to profess his/her religion and to baptize and educate their children as Catholics – this condition is to be assured in the form of a [written] promise (*cautio*).”

Dissolution in favour of the faith – art. 2

It is up to the Dicastery **for the Doctrine of the Faith** to examine the individual cases and, if expedient, to submit to the Supreme Pontiff the petition for the favour being sought.

Praedicate Evangelium, Art. 74

The Doctrinal Section, through its marriage office, is to examine, both in law and in fact, all matters concerning the *privilegium fidei* (favour of the faith).

Dissolution in favour of the faith

Marriages which could be treated either as non-consummation cases (c. 1142) or as favour of the faith cases,

“marriages entered into by parties of whom at least one is not baptized which are consummated before but not after both parties received baptism” **are to be instructed as favour of the faith cases** and submitted to the Dicastery for the Doctrine of the Faith.

Dissolution in favour of the faith – art. 3

The **diocesan Bishop** and
those **equivalent to him in
law**

or the eparchial Bishop
[see *CCEO*, c. 313] are
competent to instruct the
process.

Dissolution in favour of the faith – art. 4

It is required for the granting of the favour of the dissolution of the bond, that,
at the moment of the grant:

1° there is **no possibility of restoring** the consortium of the conjugal life;

2° the **petitioner** was not the **exclusive or prevailing culpable cause** of the breakup of the conjugal common life, and that the **party with whom the new marriage is to be contracted or convalidated did not by his or her own fault provoke** the separation of the spouses.

Dissolution in favour of the faith – art. 5

§1. If the Catholic party intends to contract or convalidate a new marriage with a person who is **not baptized** or who is a **baptized non-Catholic**, **he or she must declare** that he or she is ready to remove dangers of departure from the Faith and **the non-Catholic party must declare** that he or she is ready to allow the Catholic party the freedom to profess his/her own religion and to baptize and rear the children as Catholics.

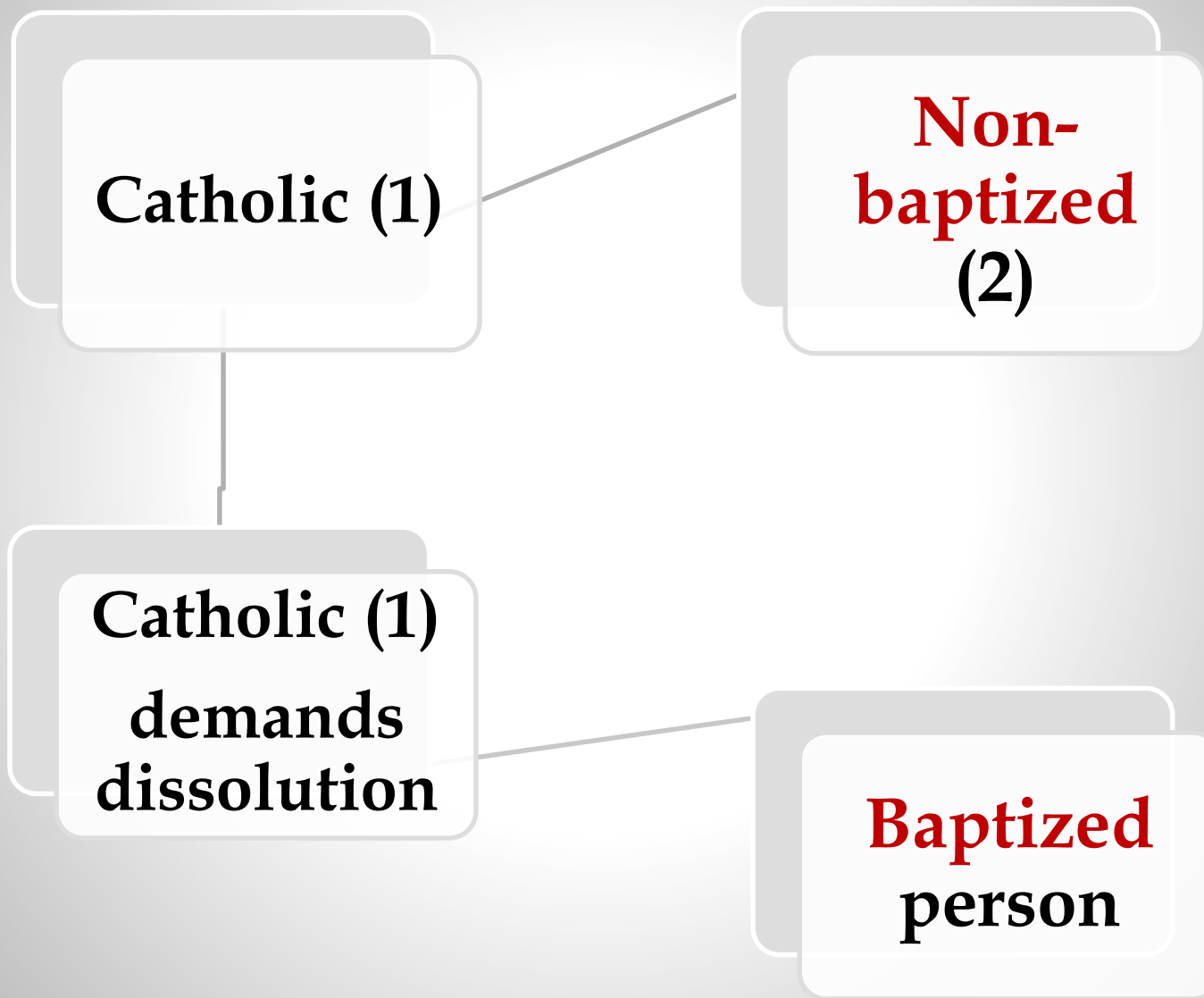
§2. **The favour of the dissolution is not granted unless this declaration is done in writing and signed by both parties.**

Dissolution in favour of the faith – art. 7

§1. A petition for the dissolution of a non-sacramental bond of marriage entered with **dispensation from the impediment of disparity of worship** can be presented to the Supreme Pontiff

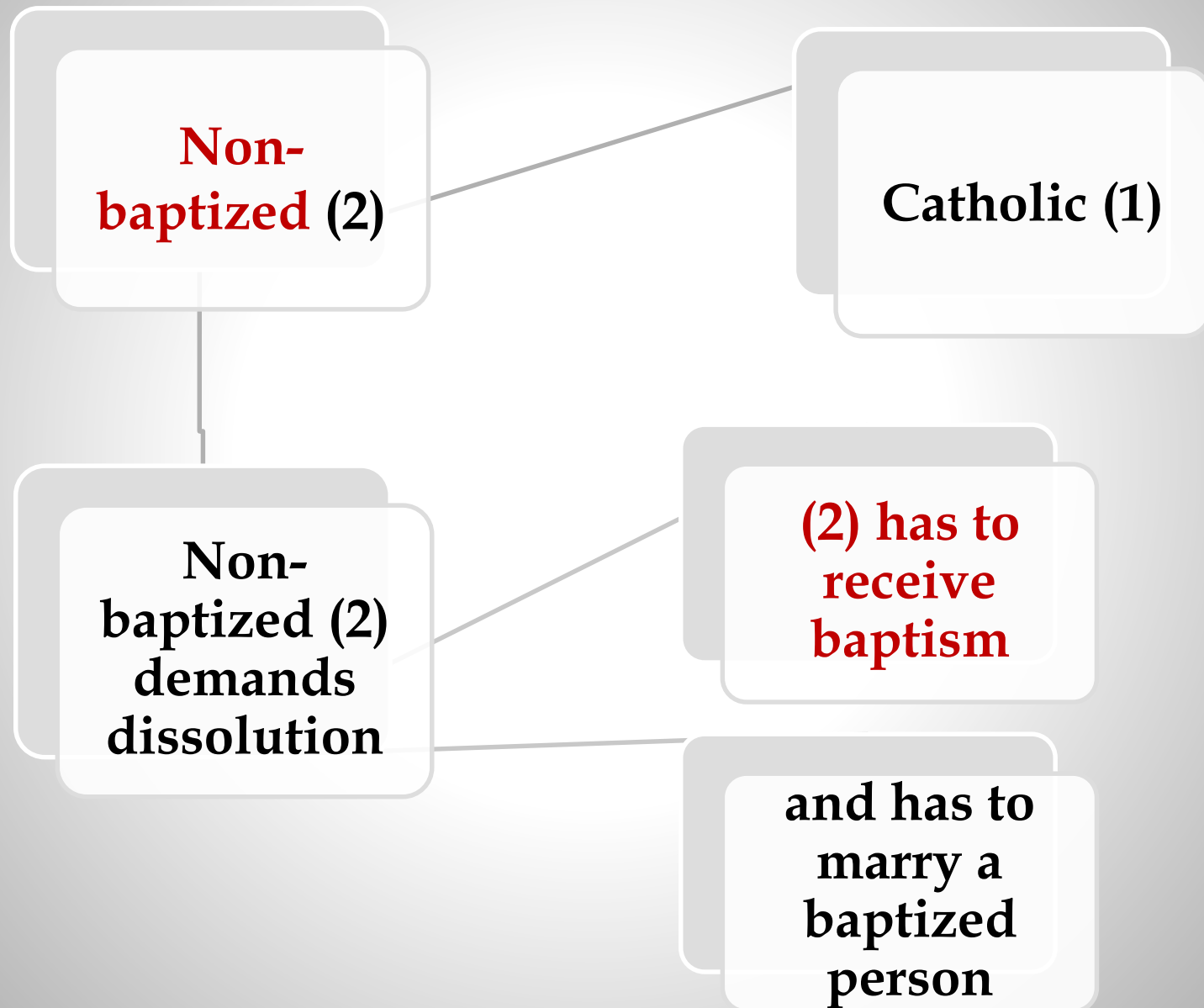
if the Catholic party intends to contract a new marriage with a **baptized person.**

Dissolution in favour of the faith



§2. In the **same case**,
a petition can be presented
to the Supreme Pontiff,
if the **non-baptized party**
intends to receive baptism
and enter a new marriage
with a **baptized party**.

Dissolution in favour of the faith



Dissolution in favour of the faith – art. 7

§3. The Bishop is not to send the petition to the Congregation for the Doctrine of the Faith, if there is prudent doubt concerning the **sincerity of the conversion** of the petitioning party or the party to be married, although one or both have received baptism.

Dissolution in favour of the faith – art. 9

Whenever there are special difficulties concerning the way in which the petitioning party intends to **satisfy his or her obligations toward the prior spouse or to the children** which may have been born of that marriage, or there is **fear of scandal** arising from the granting of the favour, the Bishop is to **consult the Congregation.**

Dissolution in favour of the faith – art. 10

If either in the process at the level of the Bishop or during the examination at the Congregation for the Doctrine of the Faith, there arises a **positive doubt** on the basis of any grounds **about the validity of the marriage** for which a dissolution is being sought, the petition to the Roman Pontiff should make mention of such a doubt.

Dissolution in favour of the faith – art. 11

§1. The Bishop is to personally carry out the instruction of the process or is to commit it to an **instructor** selected from among the tribunal judges or from **persons** (*ex personis*) approved by him for this task. The instructor is to proceed with the assistance of a **notary** and the intervention of the **defender of the bond**.

§2. This type of appointment is to be done in writing and it must be evident in the acts.

Dissolution in favour of the faith – art. 12

§1. All assertions must be proven according to the norm of law, either by documents or by depositions of witnesses which are worthy of belief.

§2. **Both spouses are to be heard** in the instruction.

Dissolution in favour of the faith – art. 12

§3. The force of full proof cannot be attributed to the declarations of the parties, unless there are present other elements which corroborate them and from which moral certainty can be established.

However, c. 1678 states in this regard:– §1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties [*this is not referring to the substance of the case, but the force of testimony*], can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, [*but not to the point of “entirely [omnino] corroborating them” [c. 1536, §2]?*] unless other elements are present which weaken them.

Dissolution in favour of the faith – art. 15

How to locate a person?

See www.mobilearchdiocese.org

and click on **About Us** and then click the link to **the Metropolitan Tribunal**.

Scroll down to **Tribunal Forms**, and click on **Possible Ways to Locate a Respondent**.

Dissolution in favour of the faith – art. 16

§1. The **absence of baptism** of one or the other spouse must be demonstrated in such a way that **all prudent doubt is removed** [=moral certitude].

§2. Witnesses are to be heard with consideration of their **quality**, such as the parents and relatives of the unbaptized party or those who were present at the time of the infancy and knew his or her whole course of life.

§3. Witnesses are to be heard not only concerning the absence of baptism, but also concerning the circumstances and indications on the basis of which it would appear **probable that baptism was not conferred**.

Dissolution in favour of the faith – art. 24

§1. The bishop, who has received all the acts, is to prepare a *votum* concerning the petition in which there is to be a reference to whether **all the conditions** for the granting of the favour are present, and especially whether the **promises** mentioned in art. 5 have been made.

§2. The reasons which argue in favour of granting the favour are to be expressed but always adding whether and in what manner the Petitioner has already attempted a new marriage or is cohabiting.

Writing a Votum (opinion)

Ordinarily there are four sections or parts in a votum (opinion):

- species facti*;
- in iure*;
- in facto*;
- conclusion

Species facti:

The species facti consists in a brief résumé of all the pertinent, undisputed facts which do not have to be proven: e.g., the petitioner's date of birth, baptism, and relevant facts concerning the parents, number of siblings, education, employment, that affect the case in some way; similar facts concerning the respondent; when and how they met, their courtship, marriage, children born of their union, etc.

In fact:

The in fact (findings) section consists a marshaling of the pertinent facts, which are found in the acts, in order to reach a conclusion. Only those facts should be included in this section which in some way contribute to the conclusion.

The in fact section is very similar to the denouement of a play, novel, or mystery story. All non pertinent matter should be omitted. Thus, there should not be a summary of the depositions by the parties and witnesses. Rather, germane quotations from the various depositions and documents, with proper references, should be used to build up an argument and to answer various objections.

Conclusion:

Everything is brought together as a conclusion. The following examples of conclusions for a votum:

Having considered all the facts as found in the acts, I am of the opinion, *salvo meliori iudicio*, that it has been proved that N.N. has not been baptized, that he now wishes to become a Catholic and receive the sacrament of baptism, and contract marriage with N.N. a baptized Catholic, who is free to marry. I recommend that Holy Father dissolve the non sacramental marriage of N.N. to N.N. in favor of the faith, in order that N.N. be able to contract a new marriage with N.N. so that they can practice the Catholic religion and give good example to their children. There is no danger of scandal among the faithful if this favor is granted since the people of this diocese have great trust in the Holy Father.

Date

Place

Signature of the Bishop

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20010430_favor-fidei_en.html

http://www.vatican.va/roman_curia/congregations/cfaith/doc_doc_index.htm

Dissolution in favour of the faith – art. 25

The usual *taxa*:

485 CDN (2015)

Dissolution of marriage in *CCEO*

CIC c. 1061 = NO EQUIVALENT IN *CCEO*

CIC c. 1141 = *CCEO* c. 853

CIC c. 1142 = *CCEO* c. 862

CIC cc. 1697-1706 = *CCEO* c. 1384

CIC cc. 1143-1147 = *CCEO* cc. 854-858

CIC cc. 1148-1150 = *CCEO* cc. 859-861

POTESTAS ECCLESIAE ➡ *CCEO* c. 1384



CONGREGATIO
PRO DOCTRINA FIDEI

RECEIVED FEB / 2 2015

Rome, January 22nd, 2014

Prot. N. [REDACTED]

Your Eminence,

The Congregation for the Doctrine of the Faith has received the additional documentation presented by your Archdiocesan Curia concerning the petition submitted by [REDACTED], a Catholic, for the dissolution of her marriage to [REDACTED], a non-baptised person, celebrated with a dispensation from the impediment of disparity of cult.

The case was examined by this Dicastery in 2013. At that time the Petitioner had requested a dissolution of her marriage *in favorem fidei* so as to be free to marry [REDACTED], a Catholic. On [REDACTED], the request was granted and the Rescript was subsequently forwarded to Your Eminence's Archdiocese.

Due to the lack of true intention of marriage on the side of the Intended Spouse, however, the Petitioner did not contract marriage, but had already separated from [REDACTED] in January of 2013. Thus, the Rescript given by this Congregation was never executed.

The Petitioner then became acquainted with [REDACTED], a Catholic; they contracted a civil marriage [REDACTED]. A son was born to them on [REDACTED], and was baptized in the Catholic Church recently. [REDACTED] is free to marry, and he is not responsible in any way for the failure of the Petitioner's marriage to the Respondent.

Having examined all the material submitted by Your Archdiocesan Curia, I wish to inform you that, since the *Norms* regarding the dissolution of a non-sacramental marriage bond *in favorem fidei* require the Petitioner to enter a new marriage *coram Ecclesia*, and since such a marriage was not contracted by the Petitioner and, as a result, the Rescript Prot. N. [REDACTED] was not executed,

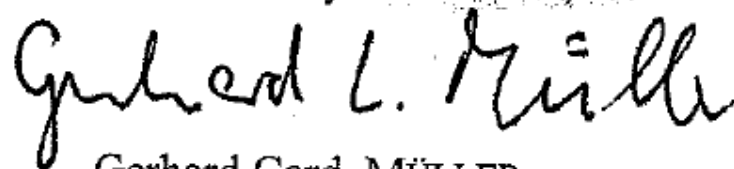
[REDACTED] is free to enter marriage
with her proposed spouse, [REDACTED]

A suitable penance is to be imposed on the Petitioner and the Third Party for the civil marriage they attempted (cfr. note n. 1 on rear of original Rescript).

Si fieri poterit, the Respondent is to be informed about the dissolution of the [REDACTED] marriage (cfr. note n. 2 on rear of original Rescript).

With fraternal regards and prayerful best wishes, I remain

Yours devotedly in the Lord,



Gerhard Card. MÜLLER

Prefect

The Congregation for the Doctrine of the Faith has examined the documentation presented by the Most Reverend _____, Bishop of _____, concerning the petition submitted by Mr _____, a baptised non-Catholic at the time of the marriage but who subsequently has been in full communion with the Catholic Church since May _____, for the dissolution of his marriage bond to Ms _____, unbaptised.

With regard to the elements of the case, as outlined in the *Norms on the Preparation of the Process for the Dissolution of the Marriage Bond in Favour of the Faith*, the case seems to be suitable for a dissolution *in favorem fidei*. There is, however, one necessary element that has not been provided, namely, information concerning the person with whom the Petitioner wishes to contract a new marriage in the Catholic Church.

Thus, to enable this Congregation to proceed with the case, you are kindly asked to contact us when the Petitioner wishes to contract marriage and to provide us with further documentation about the proposed spouse. In doing so, please refer to Prot. N. _____. Furthermore, please provide this Dicastery with translations of the documents written in Japanese (cf. *Acts*, pp. 8s.).

CONVALIDATION OF MARRIAGE

It is a remedy for marriages which:

were **entered into invalidly**, and in which, at the same time,

- the **couple, or at least one of the parties**, are willing to rectify the situation in accordance with the requirements of the law or
- the **ecclesiastical authority** does so
 - on the request of at least one of the parties or
 - of its own initiative.

Sources

- ❑ THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, decree, November 23, 2005, prot. no. 34622/03 CG, in *Periodica*, 96 (2007), 285–288.
- ❑ _____, letter on defective convalidation, December 19, 2007, prot. no. 1034/07 SAT, 185/07 ES.

Sources

- ❑ NAVARRETE, U., “Acta Tribunalium Sanctæ Sedis, Supremum Signaturæ Apostolicæ Tribunal, decretum. Commentario, ” in *Periodica*, 96 (2007), 285–306.
- ❑ _____, “A proposito del decreto del S.T. della Segnatura Apostolica del 23 novembre 2005, ” in *Periodica*, 96 (2007), 307–361.
- ❑ RENKEN, J.A., “Extraordinary Convalidation: The Radical Sanation of an Invalid Marriage,” in *Periodica*, 99 (2010), 461-501.

For marriage to be valid, i.e., to come into existence, the couple must exchange their consent lawfully or legitimately, otherwise there may be an appearance of a marriage, but not a marriage.

CONVALIDATION OF MARRIAGE

The invalidity of a marriage can come from three different sources:

- a **diriment impediment**, which renders a person incapable (*inhabilis*) of contracting marriage;
- a **defect of consent** of one or both parties – either consciously or unconsciously one or both of the parties could not or did not in fact consent;
- a **defect** in the required **legal form** for contracting marriage.

CONVALIDATION of MARRIAGE

Dignitas connubii, Art. 2 – § 1. A **marriage between Catholics**, even if only one party is a Catholic, is governed not only by divine law but also by canon law, without prejudice to art. 3, § 3 (cf. can. 1059).

§ 2. A **marriage between a Catholic party and a baptized non-Catholic** party is governed **also**:

- 1° by the proper law of the Church or ecclesial community to which the non-Catholic party belongs, if that community has its own marriage law;
- 2° by the law used by the ecclesial community to which the non-Catholic party belongs, if that community lacks its own marriage law.

See CCEO, c. 780.

CONVALIDATION of MARRIAGE

Dignitas connubii, Art. 4 – § 1. Whenever an ecclesiastical judge must decide about the nullity of a marriage of **baptized non-Catholics**:

1° in regard to the law by which the parties were bound at the time of the celebration of the marriage, art. 2, § 2 is to be observed;

2° in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.

See *CCEO*, c. 781.

CONVALIDATION of MARRIAGE

Dignitas connubii, Art. 4 – § 2. Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by **two unbaptized persons**:

1° the cause of nullity is heard according to canonical procedural law;

2° however, the question of the nullity of the marriage is decided, without prejudice to divine law, according to the law by which the parties were bound at the time of the marriage.

CONVALIDATION OF MARRIAGE

Consequently, a marriage that is invalid **can become valid**:

❑ through a **simple validation** (*simple convalidation*):

➤ through the action of at least one of the parties of the marriage making **an act of matrimonial consent**;

➤ through the **celebration of the marriage using canonical form** once the invalidating impediment or defect of consent ceases, or if the marriage was invalid because of the defect of canonical form;

CONVALIDATION OF MARRIAGE

□ through a **sanatio in radice** (radical sanation or retroactive convalidation) without the renewal of the marriage consent by the parties through an action of a competent authority removing the obstacle to the existing consent.

CONVALIDATION of MARRIAGE - C. 1156, § 1

To convalidate a marriage which is invalid because of a **diriment impediment**, it is required that

the impediment
cease

or be
dispensed,

and that at least the party aware of the impediment
renews consent.

CONVALIDATION of MARRIAGE - c. 1156, § 2

This renewal is required by
ecclesiastical law
for the **validity** of the
convalidation,

even if at the
beginning both
parties had
given consent

and had not
afterwards
withdrawn it.

Can. 12 of CIC 1917

Those who have not received baptism, the baptized who do not have sufficient use of reason, and those who have attained the use of reason, but have not yet completed their seventh year of age, are not bound by merely ecclesiastical laws, unless the law expressly provides otherwise.

Canon 11 – Merely ecclesiastical laws bind those baptized in the Catholic Church or received into it, and who have a sufficient use of reason and, unless the law expressly provides otherwise, have completed their seventh year of age.

CONVALIDATION DU MARIAGE

**Two
unbaptized
persons**

**in a
marriage,
that is
invalid
because of
an
impediment
which
ceases**

are not held to
the renewal of
non-revoked
consent for their
marriage to be
convalidated.

CONVALIDATION DU MARIAGE

Prior to November 27, 1983 **all the baptized**, even those who were never Catholics, **were bound by ecclesiastical law**. Consequently:

Although the 1917 Code expressly **exempted baptized non-Catholics from the canonical form** for marriage when they married another non-Catholic, baptized or unbaptized, **it did not exempt them from the renewal of consent for a simple convalidation**.

CONVALIDATION of MARRIAGE

Prior to November 27, 1983,
baptized non-Catholics
in a marriage with another **baptized**
non-Catholic or an **unbaptized**
person,
which was **invalid** because of an
impediment that ceased,
had to renew the unrevoked consent
in order for the marriage to be
convalidated.

CONVALIDATION of MARRIAGE

Prior to November 27, 1983,
baptized non-Catholics
in a marriage with another **baptized**
non-Catholic or an unbaptized
person,
which was **invalid because of an**
impediment that ceased,
had to renew the unrevoked consent
in order for the marriage to be
convalidated.

Can. 1059

Even if only one party is Catholic,
the marriage of Catholics is
governed not only by divine law
but also by canon law, without
prejudice to the competence of
civil authority concerning the
merely civil effects of the same
marriage.

CONVALIDATION of MARRIAGE

All Catholics and former Catholics,
even those who by a formal act left the
Church,
and **those to whom they are married,**
whether baptized or unbaptized,
in a marriage which is **invalid because of**
a no longer existing impediment,
are **held to the renewal of non-revoked**
consent
for their marriage to be convalidated.

C. 1157 - The renewal of
consent must be
a new act of will
consenting to a marriage
which the renewing party
knows or thinks
was invalid
from the beginning.

CONVALIDATION of MARRIAGE - c. 1158

§1. If the impediment is **public**, consent is to be renewed by **both parties in the canonical form**, without prejudice to the provision of can. 1127, §2.

§2. If the **impediment cannot be proved**, it is sufficient that consent be renewed **privately** and **in secret**, specifically by the party who is aware of the impediment provided **the other party persists in the consent given**, or by both parties if the impediment is known to both.

§1. A marriage invalid because of a **defect of consent** is convalidated if **the party who did not consent, now does consent**, provided **the consent given by the other party persists**.

§2. If the defect of consent **cannot be proven**, it is sufficient that the party who did not consent, gives consent **privately** and **in secret**.

§3. If the defect of consent **can be proven**, it is necessary that consent be given in the **canonical form**.

it must be
**contracted
anew in
the
canonical
form,**

without
prejudice to
the provisions
of c. 1127 §2.

**For a marriage
which is
invalid
because of
defect of form
to become
valid,**

CONVALIDATION OF MARRIAGE

However, the notion of defect of form was often given a somewhat extensive interpretation. According to that broader approach, defect of form encompasses also those cases in which the law requiring canonical form was not observed at all, that is, there was a *total lack of form*.

This is the case in which at least one of the persons is a Catholic bound by the law of canonical form, and the marriage takes place without a dispensation from form and there is no semblance of canonical form (e.g., a marriage before a civil official or a non-Catholic minister).¹

¹ Except in the case of a Catholic marrying an oriental rite non-Catholic before a sacred minister (c. 1127, §1).

CONVALIDATION OF MARRIAGE

The typical situation involves the Catholic who, bound by canonical form, has contracted marriage invalidly with a non-Catholic Christian.

Without a dispensation from the required form, he/she has married either civilly or before a non-Catholic minister, but, afterwards, for peace of conscience seeks to have the union convalidated by the Church by a marriage celebration that satisfies the requirements of canonical form.

CONVALIDATION OF MARRIAGE

The question was raised with regard to the canonical efficacy of such convalidations. The supposition was that the Catholic party desired the marriage to be rectified, and the non-Catholic spouse agreed to do so by observing canonical form, but did not think or even doubt that they were not married. How was it possible for him/her to contract marriage anew (*denuo*)? For this person the ceremony was not a marriage celebration, but merely a repetition of matrimonial consent already given and still existing.

However, the Apostolic Signatura has stated that:

2. [t]he prevailing doctrine does not consider said canon [c. 1160] to regard also an attempted civil marriage or one attempted in a non-Catholic rite, in those cases in which at least one party was bound to the canonical form. In fact, no judicial process is required for the declaration of nullity of such an attempted marriage. In any event, one must remember that in such a case a celebration in the canonical form is required.²

² THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, letter on defective convalidation, December 19, 2007, prot. no. 1034/07 SAT, 185/07 ES, no. 2, in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, 147-148.

CONVALIDATION OF MARRIAGE

The controversy seems to be the result of applying the norm of c. 1157 to the convalidation of marriage according to c. 1160. Indeed, the Apostolic Signatura has stated:

The requirement of c. 1157 refers clearly to the convalidation of a marriage which is invalid because of a diriment impediment (cf. c. 1156, § 1) and not to the convalidation of a marriage which is null because of a defect in the canonical form.¹

¹ THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, letter on defective convalidation, no. 3, 148.

CONVALIDATION OF MARRIAGE

At times it is claimed that from the psychological point of view there cannot be a matrimonial consent when one does not know or at least suppose that the attempted marriage was null.

In this regard, it is important to keep in mind that:

CONVALIDATION OF MARRIAGE

– psychologically it is sufficient to have a vague understanding that the attempted civil marriage or the one attempted in a non-Catholic rite lacked some element which the Catholic Church considers significant;

– this sufficient understanding does not require that the parties know how to explain it in a technical-canonical manner, nor does this sufficient understanding exclude the possibility that on the emotional level the parties continue to attribute some value (e.g., existential or in civil law) to the preceding union, for example, by celebrating its anniversary;

CONVALIDATION OF MARRIAGE

– nor is it required that the parties be able to explain in a technical-canonical manner what happened in the celebration of the marriage in the canonical form; even when they use certain non-technical expressions such as “blessing” to describe it, one must presume, until the contrary has been proven, that in the celebration in the canonical form consent was duly expressed and given;

CONVALIDATION OF MARRIAGE

– even when a party considered the celebration of the marriage in the canonical form to have no value, can. 1100 should be considered: “The knowledge or opinion of the nullity of a marriage does not necessarily exclude matrimonial consent.”

CONVALIDATION OF MARRIAGE

The application of these presumptions to a marriage celebrated in the canonical form lead to some conclusions:

- the consent expressed according to the canonical form must be presumed valid, until the contrary is proven;
- the proof of a defect of consent in view of a declaration of the nullity of marriage must therefore follow the usual criteria, taking into account the established Rotal jurisprudence that has developed secure models of proof regarding defects or flaws of consent.

**SANATIO
IN
RADICE**

CONVALIDATION OF MARRIAGE

At times it happens that matrimonial consent, which is **of itself naturally sufficient** for bringing into existence a marriage, **cannot have its effect** either

- because one or both of the persons are not “legally capable” of giving consent, i.e., they are incapable of doing so because of a diriment impediment, or
- because the consent was not “lawfully manifested,” i.e., the legal form required for validity of marriage was not observed.

CONVALIDATION of MARRIAGE - c. 1161, § 1

The
**retroactive
convalidation**
of an invalid
marriage is its
convalidation

without the
renewal of consent,

granted by the
competent
authority.

It involves a
dispensation from
an impediment

if there is
one,

and a dispensation
from the canonical
form

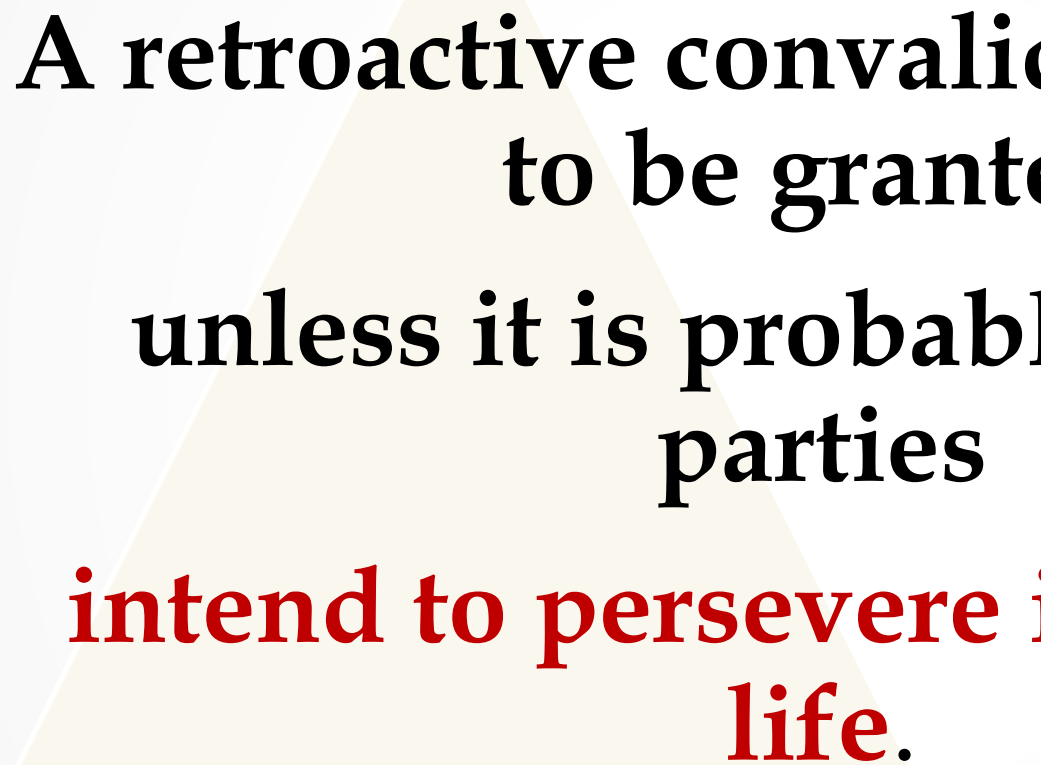
if it had not
been
observed,

as well as a referral
back to the past of
the canonical effects.

The convalidation takes place
**from the moment the
favour is granted;**

the **referral back**, however, is
understood to have been made to
**the moment the marriage was
celebrated,**

unless it is otherwise
expressly provided.



**A retroactive convalidation is not
to be granted
unless it is probable that the
parties
intend to persevere in conjugal
life.**

§ 1. A marriage which is invalid because of an impediment or because of defect of the legal form, can be convalidated retroactively, provided **the consent of both parties persists.**

§ 2. A marriage which is invalid because of an **impediment of the natural law** or of the **divine positive law**, can be convalidated retroactively only after the **impediment has ceased.**

§ 1. If consent is **lacking** in either or both of the parties, a **marriage cannot be rectified by a retroactive convalidation**, whether consent was absent from the beginning or, though given at the beginning, was subsequently revoked.

§ 2. If the consent was indeed absent from the beginning but was subsequently given, a **retroactive convalidation can be granted from the moment the consent was given.**

A retroactive convalidation may
validly be granted

**even if one or both of the parties is
unaware of it;**

it is not, however, to
be granted except
for a **grave reason.**

Retroactive convalidation
can be granted by the
Apostolic See.

It can be granted by the
diocesan Bishop

in individual cases,

even if a number of reasons for nullity
occur together in the same marriage,

assuming that for a retroactive convalidation of a
mixed marriage the conditions of c. 1125 will
have been fulfilled.



It **cannot, however, be granted by him**

if there is an **impediment** whose dispensation is reserved to the Apostolic See in accordance with can. 1078, §2,

or if there is a question of an **impediment of the natural law or of the divine positive law** which has now **ceased**.

CONVALIDATION OF MARRIAGE

Dispensation reserved to the Apostolic See:

- the impediment of Holy Orders,
- a perpetual vow of chastity in a religious institute of pontifical right,
- impediment of crime resulting from the murder of the spouse of one of the parties.

The same limitation exists for impediments of natural or divine positive law which ceased to exist:

- even after the death of the previous spouse of one of the parties, the bishop cannot grant a *sanatio* for their marriage, which is invalid because of the impediment of marriage bond.

MASSIGNANI, E., “L’istituto della convalidazione automatica e l’ordinamento canonico,” in *Quaderni di diritto ecclesiale*, 31 (2018), 191–204.

_____, *L’istituto della convalidazione automatica: Un confronto tra l’ordinamento canonico e quello statuale con speciale riguardo alla convalida del matrimonio*, Rome, Gregorian and Biblical Press, 2019.

***CIC* cc. 1156 - 1160 =**

***CCEO* cc. 843 - 847**

***CIC* cc. 1161 - 1165 =**

***CCEO* cc. 848 - 852**



Thank You!